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EXAMINER

WILSON, LEE D

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 03/17/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 9

Application Number: 09/899,871
Filing Date: July 06, 2001
Appellant(s): COLLIER ET AL.

Kevin L. Daffer, Reg. No. 34,146
For Appellant

EXAMINER'S ANSWER

MAILED

MAR 12 2004

GROUP 1.00

This is in response to the appeal brief filed 10/6/03.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 11, 12, 14, 16, 17, and 18-22 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

6,283,840 Huey 4-2001 (currently applied)

6,284,092 Manfredi 4-2001 (**This has been withdrawn**)

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 11, 12, 14, 16, 17, and 18-22 are rejected under 35 U.S.C.102 (e). This rejection is set forth in prior Office Action, Paper No. 4; **however , for the convince of the Court the rejection is also presented below.**

Claim Rejections - 35 USC § 102

Claims 11-12, 14, and 16-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Huey (6283840).

Huey discloses a system having a polishing pad (54), a spray element (72), shields (60 and see fig.4 in which the shields are adjustable because the arm moves which adjust the position of the shields), and pressure between (10 to 60 psi, see col. 4, line 24).

In regard to the method claims, the method is merely the natural use of the claimed apparatus. The limitation of having a pulsating sequence would be a matter of intended use because the user can manually or automatically cause the spray to pulsate as a matter of operator choice.

(This has been withdrawn) Claims 11-12, 14, and 16-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Manfredi (6284092).

(11) Response to Argument

Appellant argues that the mobility of the arm assembly does not constitute a spray element with adjustable shields for claims 11, 12, 16, and 17.

a. The appellant does not recite any specific structure nor means that effect the adjustability of the shields. The claim language is broad and merely calls adjustability of the shields; therefore, the broadest interpretation of the claim would allow for a shields attached to a mobile arm to constitute adjustable shields. It the examiners opinion that the only limitations that can be considered as a bar against the prior art are the one's recited in the claim. The examiner is aware of that structure which makes the applicants shields adjustable but these limitations cannot be read into the claim or considered until the appellant recites them.

Appellant states that there is no motivation within Huey to teach or suggest a spray element with one or more adjustable shields arranged about a plurality of nozzles.

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a. This is a 102 rejection so motivation is not necessary. The spray elements (72) are recited and shields are shown (figs. 3&4 show side walls surrounding the nozzles).

b. Each sidewall comprises a shield and is adjustable with respect to the polishing pad. Please see col. 3, lines 54-59. It is noted that claims 11 does not require the shields to either move independently or move relative to the nozzles. Huey defines the term adjustability see col. 3, lines 55-59; although, this may not be the adjustability envisioned by the appellant but it satisfies what is being claimed.

Appellant states that Huey does not disclose a spray element with a nozzle having a spray distribution which overlaps a spray distribution of an adjacent nozzle.

a. The examiner disagrees because the nozzles are spaced apart but the spray patterns are close enough to have overlap of streams notice the two set of nozzles closest together. One set of nozzles is enough to read of the claims. Although is has not been applied as a rejection Mullins (5578529) which is another example of how streams can overlap.

Appellant states that there is no motivation to modify Huey to provide a spray element with a nozzle having a spray distribution which overlaps a spray distribution of an adjacent nozzle.

a. These arguments are misdirected and off point because motivation is considered in a 103 rejection and there is no 103 rejections present. There was no need because the prior art discloses these limitations in a 102 rejection.

Appellant states that a natural use of the claimed apparatus is not a proper basis for rejection of a method claim.

a. All inventions have a natural way of using them because of the specific structure. The structure will dictate how the invention has to be used. Therefore the structure and it inherently will have some method of use.

Appellant states the pulsating a pressurized fluid is not necessarily a natural use of the presently claimed apparatus and pulsating fluid is not a matter of operator choice.

a. The prior art discloses using pressurized fluids which can be controlled. Huey fluids can be turned on and off which constitutes pulsating. Appellant has not specified pulsating or really define some sequence or special pattern to be considered. Appellant has not recited any special structure that is used to accomplish this pulsating. This structure can be used as a matter of choice by the operator to accomplish a pulsating of the fluid.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Ldw

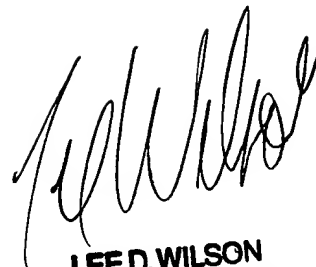
March 1, 2004

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